

**5/7/13 BD MEETING – ITEM #5
CHANGE SHEET #1 (CIRCULATED 5/1/13)**

The following changes should be made relative to the clean version of the March 15, 2013, draft *CWSRF Policy* amendment to address comments received from stakeholders during the public review period.

A. The Executive Summary on page iv should be modified as follows:

EXECUTIVE SUMMARY

This Policy was written to implement the 1987 Amendments to the federal Clean Water Act (CWA), which created the Clean Water State Revolving Fund (CWSRF) Program. The CWSRF provides various types of assistance for ~~construction of~~ Publicly-Owned ~~Wastewater~~ Treatment Works (POTW), including treatment facilities, sanitary sewer collection systems, sewer interceptors, water reclamation facilities and distribution systems, storm water drainage systems, and combined sewer systems; for implementation of programs and projects to control pollution from nonpoint sources and storm water drainage; ~~;~~ and for development and implementation of estuary cleanup-conservation and management programs. The CWSRF Program offers low cost financing agreements for water quality projects.

B. The second paragraph under II. Purpose and Objective, on page 1 should be modified as follows:

The State Water Board also seeks to reduce the effects of climate change and to promote sustainable water resources for future generations. This Policy is designed to support ~~these secondary~~multiple objectives where economically and technically feasible. These ~~secondary~~additional objectives must be cost-effective and ~~essential components of projects that meet~~complement the federal and state criteria in the preceding paragraph and ~~support~~ the policy goals of the State Water Board.

C. The definition of “applicant” on page 1 should be modified as follows:

“Applicant” means, for the purpose of a publicly owned treatment works project, a city, town, district, state agency, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under state law, having jurisdiction over disposal of sewage, industrial wastes or other waste, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the federal CWA applying for CWSRF funding. For the purpose of an expanded use project, “applicant” includes the foregoing, as well as a 501 (c)(3) nonprofit organization or one of California’s National Estuary Programs.

D. The definition of “environmental document” on page 2 should read as follows:

“Environmental document” means a Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, Substitute Environmental Document (SED), or an Environmental Impact Report (EIR) prepared in accordance with CEQA and associated supporting documents showing compliance with federal environmental laws.

E. The definition of “expanded use project” on page 2 should read as follows to clarify the eligibility storm water projects:

“Expanded Use Project” means a project in one of the following categories:

- Storm Water Projects as long as they are not required as part of a National Pollutant Discharge Elimination System permit (Storm Water Projects that are required or specified in a National Pollutant Discharge Elimination System permit are fundable as Treatment Works Projects);
- Implementation of a Nonpoint Source Project; or
- Development & Implementation of Estuary Comprehensive Conservation and Management Plans.

F. The definition of “publicly owned wastewater treatment works” or “POTW Project” on page 4 should read as follows to clarify the eligibility treatment works projects that are not wastewater projects:

“Publicly Owned ~~Wastewater~~ Treatment Works” or “POTW Project” means any distinguishable segment, or segments, of a publicly owned treatment facility or treatment works described in the approved financing agreement, which can be bid separately, and for which CWSRF financial assistance is sought or provided.

G. Storm water project eligibility under paragraph X.C.1.a on page 30 and the associated footnote #2 at the bottom of page 31 should be clarified as follows:

Construction of facilities to treat, reduce, or prevent NPS or point source pollution not ~~regulated~~ required or specified by a National Pollution Discharge Elimination System permit,² including reimbursement of planning, design, environmental documents, project administration, and construction management for facilities construction;

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- ² Storm water projects are eligible for funding under section IX of this Policy if they community ~~has~~^{ve} a municipal separate storm sewer system National Pollutant Discharge Elimination System permit and ~~are~~^{the project is} publicly owned.

H. Paragraph IV.A.3.b on page 7 should be modified as follows to give a sustainability point to a project that incorporate climate change adaptation:

3. Sustainability

- b. The applicant maintains a capital improvement plan, an asset management plan, or has performed a full-cost pricing analysis, or the project incorporates climate change adaptation.

I. Priority class B under paragraph IV.A.2.b on page 6 should be simplified as follows:

B - Pollution of Impaired Water Bodies

Projects ~~required to~~ address impairments of ~~correct conditions where the Regional Water Board Executive Officer certifies that the water quality objectives for water body listed on the~~ CWA 303(d) listed water bodies ~~are not being attained.~~

J. The introduction of Section V. on page 9 should be modified as follows to clarify that match financing in the CWSRF program is a loan financing option rather than grant matching with which many applicants are familiar:

V. MATCH FINANCING

The State of California must ~~provide~~ contribute capital into the CWSRF a match equal to 20 percent of the federal capital contributions (i.e., Capitalization Grants.) The State Water Board may offer a reduced interest rate on loans or other financing to applicants that ~~provide~~ contribute this these ~~matching funds funding to the CWSRF through their loan or other financing payments.~~

K. The introductory paragraph for section VIII on page 11 should be clarified as follows:

VIII. PLANNING/DESIGN FINANCING

Applicants have the option to request separate planning and design financing for their projects. Planning and design costs are eligible for reimbursement as part of a construction or implementation financing agreement if not previously financed. An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix E contains the application for planning/design financing.

L. Section XI.B.5.b on page 32 should be modified as follows:

The recipient must submit all completed DBE forms from the selected contractor with the final budget approval package per section XI(C)(2) below. If the recipient selected contractor has not taken acceptable “Good Faith” efforts, the Division cannot accept the award of the construction contract. The recipient may select the next low, responsive and responsible bidder. Alternatively, it may rebid the contract. It must choose one of these options in order to receive CWSRF assistance. Consistent with the results of the Division’s financial security review, the Division will amend the financing agreement to reflect the costs of selecting the next low, responsive and responsible bidder or the low, responsive, and responsible bidder after rebidding the project.

M. The introductory paragraph for Section on page 16 should be modified to acknowledge the eligibility of combined sewer system projects:

IX. PUBLICLY OWNED TREATMENT WORKS FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix G contains the application for construction/implementation financing. Publicly owned treatment works includes all projects meeting the definition of “treatment works” in the CWA (33 U. S. Code § 1293), including but not limited to, wastewater infrastructure such as treatment plants, sanitary sewer systems, pumping stations, force mains, and solids handling

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equipment; combined sewer overflow correction measures; storm water treatment and abatement measures required by a National Pollutant Discharge Elimination System permit and publicly owned; and leachate treatment systems at publicly owned landfills. Applicants should contact the Division for assistance with eligibility determinations.

N. Section IX.C.2.k on page 28 should be modified as follows:

- k. Replacement of facilities previously funded by Clean Water grants or CWSRF financing except under one of the following circumstances:
 - i. Where upgrading treatment systems or technology is necessary to achieve the Regional Water Board-mandated level of treatment and the replacement of previously funded facilities is necessary to achieve the mandated enhanced level of treatment;
 - ii. Where the facility or portion of the facility can no longer provide reliable service because it has reached the end of its useful life;
 - iii. Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable or cost effective operation of the facility; or
 - iiiv. Where a proposed water recycling project:
 - A. Meets the definition of an eligible water recycling project pursuant to current WRFP Guidelines per Appendix D;
 - B. Uses recycled water to replace a bona fide current or proposed beneficial consumptive use of fresh water; and
 - C. Necessitates the replacement of previously funded facilities to install the recycling project.

O. Sections IX.B.4.b and IX.B.4.c. starting on page 22 should be modified as follows to clarify the reserve and coverage requirements on CWSRF financing:

- b. Reserve and Coverage
 - i. The applicant will normally be expected to establish and maintain, until the financing agreement is repaid, a restricted reserve equal to one year's debt service from available cash prior to the construction completion date, unless the Division determines that credit or tax considerations support a different result.

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- ii. The applicant must comply with existing coverage covenants or with CWSRF coverage requirements, whichever covenants or requirements provide greater coverage. The applicant's net revenues at completion of construction pledged to pay all senior debts relying on the Pledged Revenues and Funds (PRF) must be at least 1.2 times the highest year's senior debt service, and the net revenues pledged to pay all debts must be at least 1.1 times the highest year's aggregate debt service. Where a CWSRF obligation will be within the applicant's top tier of related debt (senior level), the CWSRF coverage requirement is 1.1 times the highest year's debt service after completion of project construction. Where a CWSRF obligation will be subordinate level debt, the CWSRF coverage requirement is 1.2 times the highest year's projected debt service.

c. Additional Debt

- i. The State Water Board normally expects the CWSRF debt obligation to be a senior debt obligation, unless the Division determines that credit considerations support a different result.

P. Section IV.C.1 on page 9 should be modified as follows to clarify the effective date of the CWSRF financing agreement:

C. Interest Rate and Other Charges

- 1. Generally, the interest rate for CWSRF financing agreements is one-half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Division initiates preparationes of the financing agreement document for routing and signoff or the State Water Board approves the financing, whichever is first, rounded up to the nearest 0.1 percent.